

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

EARL THOMAS MARSHALL,	)	
	)	
Movant,	)	
	)	
v.	)	No. 4:17-CV-1350 CDP
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent,	)	

**MEMORANDUM AND ORDER**

This matter is before me on the motion of Earl Marshall to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The motion is denied.

On March 14, 2008, movant pled guilty to one count of conspiracy to possess with the intent to distribute more than 100 kilograms of marijuana. *United States v. Marshall*, No. 4:07-CR-486 CDP. On August 1, 2008, I sentenced him to a term of 192 months' imprisonment. In applying the Sentencing Guidelines, I found him to be a Career Offender under § 4B1.1 because he had two prior felony convictions for controlled substance offenses, and I enhanced his sentence accordingly. I did not apply any statutory sentence enhancements.

In this case, movant argues that his sentence is now invalid under *Mathis v. United States*, 136 S.Ct. 2243 (2016), and he asserts that his motion is timely under 28 U.S.C. § 2255(f)(3) because *Mathis* announced a new rule that has been made retroactive by the Supreme Court. Specifically, he argues that his prior Oklahoma

conviction for trafficking in marijuana is no longer a valid ground for applying the Career Offender enhancement under § 4B1.1 of the Sentencing Guidelines.

In *Mathis*, the Court held that a prior conviction does not qualify as the generic form of a predicate “violent felony” offense listed in the Armed Career Criminal Act (“the ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), if an element of the crime of conviction is broader than an element of the generic offense because the crime of conviction enumerates various alternative factual means of satisfying a single element. *Id.* at 2251.

First, *Mathis* has no bearing on movant’s sentence. Section 924(e)(2)(B)(ii) applies to prior convictions for “violent felonies,” not prior convictions for “controlled substance offenses,” both of which are independent grounds for sentencing enhancements. *Compare* 18 U.S.C. § 924(e)(2)(A) *with* § 924(e)(2)(B); *and see* U.S.S.G. § 4B1.1(a)(3) (requiring Career Offender enhancement for offenders with “at least two prior felony convictions of *either* a crime of violence *or* a controlled substance offense.”) (emphasis mine). And there is no question whether trafficking in marijuana is a controlled substance offense. Therefore, movant’s claim is meritless.

Second, this action is also barred by the limitations period because *Mathis* is not retroactively applicable to cases on collateral review. It was a statutory interpretation case, not a substantive constitutional challenge under the Due

Process Clause. *See Dawkins v. United States*, 829 F.3d 549, 551 (7th Cir. 2016) (“*Mathis* did not announce [a new rule made retroactive by the Supreme Court]; it is a case of statutory interpretation.”); *see also United States v. Evenson*, ---F.3d---, 2017 WL 3203547 (8th Cir. July 28, 2017) (“As the Supreme Court presented it, the decision [in *Mathis*] simply reflected the ‘straightforward’ application of decades of precedent.”). For these reasons, this action is dismissed. *See* 28 U.S.C. § 2255 Rule 4.

Finally, movant has failed to demonstrate that jurists of reason would find it debatable whether he is entitled to relief. Therefore, I will not issue a certificate of appealability. 28 U.S.C. § 2253(c).


Accordingly,

**IT IS HEREBY ORDERED** that Marshall’s motion to vacate, set aside, or correct sentence is **DENIED**, and this action is **DISMISSED**.

**IT IS FURTHER ORDERED** that I will not issue a certificate of appealability.

An Order of Dismissal will be filed forthwith.

Dated this 10th day of August, 2017.

  
CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE